

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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No. 13-I-1262

IN THE MATTER OF:

CONSENT ORDER

ROBERT ADAM BROCATO, M.D.

(Certificate No. 204910)

Respondent

The above-entitled matter was docketed for investigation by the Investigating Officer of the Louisiana State Board of Medical Examiners (the "Board"). Robert Adam Brocato, M.D. ("Dr. Brocato") is a physician who at all times pertinent has been licensed and engaged in the practice of medicine in and around Many, Louisiana.

Dr. Brocato came to the Board's attention when information was received indicating that Dr. Brocato, who has a history of chemical dependency in remission, had a return to use. Dr. Brocato subsequently entered and successfully completed treatment at a Board approved treatment facility. At the completion of his treatment, Dr. Brocato was provided with recommendations which included, among other conditions, execution of a monitoring agreement with the Physicians' Health Foundation of Louisiana Inc.'s Physicians' Health Program (the "PHP"), attendance at specified meetings and counseling. Provided that he adheres to their recommendations, it is the opinion of his treating professionals that Dr. Brocato is capable of returning to the practice of medicine with reasonable skill and safety to patients.

As evidenced by his subscription to this Order, Dr. Brocato acknowledges the substantial accuracy of the forgoing information and that such acknowledgment and the reported information would provide the Investigating Officer assigned to this matter by the Board with probable cause to pursue administrative proceedings against him for violation of the Louisiana Medical Practice Act, La. Rev. Stat. §37:1285 (A) (5), and (25)¹, constituting sufficient cause for action against his license to practice medicine in the State of Louisiana. On the basis of

¹ The Board may take action against the license of a physician as a result of La. Rev. Stat. §37:1285A: (5) '[H]abitual or recurring abuse of drugs, including alcohol, which affect the central nervous system and which are capable of inducing physiological or psychological dependence;' and (25) '[I]nability to practice medicine with reasonable skill or safety to patients because of mental illness or deficiency; physical illness, including but not limited to deterioration through the aging process or loss of motor skills; and/or excessive use or abuse of drugs, including alcohol';

apparently reliable information, however, the Board is persuaded that the condition from which Dr. Brocato suffers may be susceptible to effective medical treatment, resulting in the maintenance of his capacity to engage in the practice of medicine with reasonable skill and safety to patients, provided that he strictly observes and complies with appropriate restrictions on and conditions to maintenance of his medical license. In consideration of these finding, accordingly, and on the recommendation of the Investigating Officer respecting the pending investigation, the Board has concluded that its responsibility to ensure the health, safety and welfare of the citizens of this state against the unprofessional, unqualified and unsafe practice of medicine, La. Rev. Stat. §37:1261, will be effectively served by entry of the Order set forth hereinafter by consent.

Recognizing his right to written notification of any charges that may be asserted against him as a result of this investigation, as well as the right to administrative adjudication of such charges, at which time he would be entitled to be represented by legal counsel, to call witnesses and to present evidence in defense or in mitigation of the charges made and to a decision thereon by the Board based upon written findings of fact and conclusions of law, pursuant to La. Rev. Stat. §§49:951 et seq. Dr. Brocato, nonetheless, hereby waives his rights to notice, formal adjudication and written decision and, pursuant to La. Rev. Stat. §49:955(D), consents to entry of the Order set forth hereinafter. Furthermore, Dr. Brocato acknowledges that he hereby waives any right to which he may be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951 et seq., or to which he otherwise may be afforded by any law to contest his agreement to or the force and effect of the Board's investigation or this document in any court or other forum. By his subscription hereto, Dr. Brocato also hereby authorizes the Investigating Officer, ("I/O") to present this Consent Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation and he waives any objection to such disclosures under La. Rev. Stat. §49:960. Dr. Brocato expressly acknowledges that the disclosure of such information to the Board by the I/O shall be without prejudice to the I/O's authority to proceed with the filing and adjudication of any administrative charges that may subsequently be filed in this matter against him, or to the Board's capacity to adjudicate such complaint should the Board decline to approve this Consent Order. Accordingly, in consideration of the forgoing and pursuant to the authority vested in the Board by La. Rev. Stat. §49:955(D);

IT IS ORDERED that the license of Robert Adam Brocato, M.D. to engage in the practice of medicine in the State of Louisiana, as evidenced by Certificate No. 204910, be and the same is hereby, placed **ON PROBATION** for a period of three (3) years (the "probationary period") *provided, however*, that Dr. Brocato's continuing exercise of rights and privileges granted thereby, shall be conditioned upon and subject to his acceptance of and strict compliance with the following terms and conditions and restrictions:

(1) Maintenance of Complete Abstinence. Dr. Brocato shall maintain complete and total abstinence from the use of alcohol, controlled and any other mood-altering substance for as long as he holds a license to practice medicine in this state, except as may be prescribed by a treating physician other than himself for a *bona fide* medical condition. Dr. Brocato shall personally inform the PHP and the Board's Compliance Officer, both orally and in writing, within forty-eight (48) hours of the prescription or

administration of any controlled or mood-altering substance received by him from any physician for treatment of a *bona fide* medical condition. If the prescription is from another physician, he shall also inform his treating/monitoring physician in the same manner.

(2) Continuing Treatment, Participation in the PHP/Reports to Board. Dr. Brocato shall enter into and execute a monitoring agreement with the PHP. Dr. Brocato shall continue in, abide by and strictly adhere to all recommendations for ongoing treatment and monitoring of his condition, which have or may be contained in his PHP monitoring agreement, or any subsequent agreement which may be recommended by the PHP, as well as those recommended by his treating physicians and those prescribed by any other health care provider involved in his care to the extent that they continue to follow him. Dr. Brocato shall, in addition, authorize and cause his treating and monitoring physicians and/or the PHP to submit to the Board, not less frequently than quarterly throughout the probationary period, written reports and/or verbal reports, should the Board desire the latter, on his then-current treatment diagnosis, prognosis, course of treatment, maintenance of abstinence from controlled and mood-altering substances, his fitness and ability to practice medicine with reasonable skill and safety to patients, and his compliance with the terms, conditions and restrictions of this Order and his PHP monitoring agreement.

(3) Drug Screens. Dr. Brocato shall submit to periodic, unannounced blood, urine, saliva and/or hair collection for testing for the presence of alcohol and/or controlled and other mood-altering substances by the PHP or its designee. Unless and until this condition is modified or rescinded by the Board, he shall authorize and cause such physician or testing facility and/or the PHP to report the results of such drug screens to the Board not less frequently than quarterly throughout the probationary period.

(4) Board Access to Treatment Records and Reports. Dr. Brocato shall, and does by his subscription hereto, authorize any physician or any institution at which he undergoes treatment for alcohol or other chemical abuse or dependency from which he may suffer or be diagnosed, as well as any physician under whose care he may come at such an institution who has or may hereafter evaluate, diagnose, treat or monitor him, to provide the Board with copies of all medical reports relating to Dr. Brocato's history, examination, evaluation, diagnosis, treatment and prognosis and to provide the Board with written and verbal reports relative thereto. Dr. Brocato expressly waives any privilege that may otherwise be afforded the disclosure of such records pursuant to state or federal law and shall immediately execute any authorization or release that may be necessary to permit the Board access to such records.

(5) Prescription, Dispensation, Administration of Controlled Substances Prohibited. Except as authorized herein Dr. Brocato shall not prescribe, dispense or administer any substance which may be classified, defined, enumerated or included in 21 C.F.R. §§1308.11-.15 or La. Rev. Stat §40:964, as a **Schedule II, III or IV** controlled substance. The prohibitions contained in this paragraph shall not prohibit him from prescribing Schedule V controlled substances in the course of his practice nor shall it

prevent him from ordering controlled substances and other prescription medications for administration to in-patients of and at a hospital or similar institution where he may be employed or exercise staff and clinical privileges under the controlled substance license and registration of such hospital or institution and in accordance with such hospital or institution's prescribed policies and procedures governing the administration of controlled substances.

(6) Prohibitions on the Prescribing of Controlled Substances for the Treatment of Chronic Pain or Obesity. At no time following the effective date of this Order shall Dr. Brocato prescribe controlled substances for the treatment of non-cancer related chronic pain or obesity. Furthermore, he shall not receive any remuneration from, have any ownership interest in or association with any clinic or practice setting or arrangement that advertizes or holds itself out to the public as a clinic or practice for the care and/or treatment of patients for the management of chronic pain or obesity. Until and unless otherwise modified by the Board, in its sole discretion, the restrictions contained in this provision shall survive the probationary period and remain in effect so long as Respondent shall hold any form of license or permit to practice medicine in the state of Louisiana.

(7) Board Approval of Practice Setting. During the probationary period, Dr. Brocato shall, before continuing or accepting any employment with any clinic, hospital, or other entity providing healthcare services to patients, obtain the Board's written approval of his employment and shall provide any and all information that the Board may then require in connection with such approval. Dr. Brocato shall not engage in the practice of medicine in any practice setting in advance of the Board's specific written approval of such practice setting.

(8) Attendance at Approved Seminar/Course on Professionalism and Medical Ethics. Within one hundred eighty days (180) of issuance of this order, Dr. Brocato shall provide written confirmation that he has attended and successfully completed one or more courses of study, acceptable to and pre-approved in writing by the Board, in the area of appropriate medical boundaries, professionalism and medical ethics. All courses required by this provision shall be comprehensive in nature (greater than 20 credit hours) and shall be acceptable to and pre-approved in writing by the Board or its designee.

(9) Collaboration With Nurse Practitioners, Supervision of Physician Assistants Prohibited. During the probationary term, the Dr. Brocato shall not enter into nor continue in a collaborative or supervisory practice agreement with a mid-level provider, *e.g.*, nurse practitioner or physician assistant. This restriction shall not preclude Dr. Brocato from employing nurses or other medical personnel to assist in his practice, as long as he is present and directing their activities appropriate to their level of expertise and ability.

(10) Continuing Medical Education. Dr. Brocato shall obtain not less than fifty (50) credit hours per year for each of the three (3) years of his probationary period through attendance at and participation in continuing medical education ("CME")

programs accredited by the American Medical Association. On or before the anniversary date of the effective date of this Consent Order, for each of the next three (3) years, Dr. Brocato shall cause to be submitted to the Board written certification of the CME programs and credits completed by him during the preceding twelve (12) months.

(11) Absence from the State/Practice/Effect on Probation. Should Dr. Brocato at anytime during the period of probation ordered herein be absent from the state of Louisiana, relocate to and/or take up residency in another state or country, or discontinue practicing as a physician, for a period of thirty (30) days or more, he will so advise the Board in writing. In such instance, the probationary period ordered herein shall be deemed interrupted and extended for no less than the period of time during which he was not engaged in practice or was absent from the state of Louisiana; however, all terms and conditions may continue to be in effect as ordered or may be modified or altered as needed at the Board's discretion.

(12) Notification. Dr. Brocato shall provide a complete copy of this Order to each hospital, clinic, facility or other employer or prospective employer at which or for whom he provides services as a physician in this state.

(13) Cooperation with Board's Probation and Compliance Officer. Dr. Brocato shall immediately notify the Board's Probation and Compliance Officer of any change in his current home and professional addresses and telephone numbers and he shall direct all matters required pursuant to this Consent Order to the attention of the Probation and Compliance Officer, with whom he shall cooperate on all matters and inquiries pertaining to his compliance with the terms and conditions of this Consent Order.

(14) Probation Monitoring Fee. For each year of the probationary period Dr. Brocato shall pay the Board a probation monitoring fee of Three Hundred (\$300.00) Dollars. Payment of the initial fee shall be due not later than sixty (60) days from the effective date of this Order. All subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.

(15) Effect of Violation/Sanction/Resolution. Dr. Brocato acknowledges and stipulates that his receipt of written notification from the Board that it has received information from the PHP which indicates his failure to maintain abstinence from alcohol, controlled or other mood altering substances, or his failure to otherwise comply with his PHP contract shall constitute his irrevocable consent to the immediate suspension of his license to practice medicine in this state. Thereafter, he will not be eligible to request reinstatement for a period of two (2) years.

(16) Certification of Compliance with Probationary Terms/Personal Appearance. At least sixty (60) days prior to the conclusion of the probationary period imposed herein, Dr. Brocato shall provide the Board with an affidavit certifying that he has complied with each of the terms of probation imposed by this Order and he shall contact the Board and arrange for a personal appearance before the Board at its meeting preceding the expiration of his probationary period. The probationary period and all of

its terms and conditions shall be, and shall be deemed to be, extended and continued in full force and effect pending Dr. Brocato's compliance with the requirements of this provision.

IT IS FURTHER ORDERED that any violation or failure of strict compliance with any of the terms and conditions set forth by this Order by Dr. Brocato shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for the revocation and cancellation of Dr. Brocato's license to practice medicine in the State of Louisiana or for such other action as the Board may deem appropriate, as if such violations were enumerated among the causes provided in La. Rev. Stat. § 37:1285.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a public record.

Signed at New Orleans, Louisiana, and effective on this 14 day of April, 2014.

**LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS**

BY:



MARK H. DAWSON, M.D.
President

ACKNOWLEDGMENT
AND CONSENT

STATE OF LOUISIANA

PARISH OF Sabine

I, ROBERT ADAM BROCATO, M.D. hereby acknowledge, approve, accept and consent to entry of the above and foregoing Order, this 28 day of March, 2014.

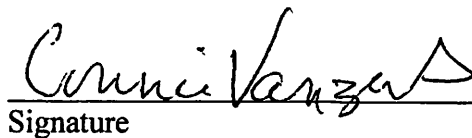


ROBERT ADAM BROCATO, M.D.

WITNESSES:


Signature

Nicholas J. Curdon
Typed Name


Signature

Connie Vanzandt
Typed Name

370 Jefferson ave.
Address

880 San Antonio Ave.
Address

Metairie La. 70005
City/State/Zip Code

Many LA 71445
City/State/Zip Code

Sworn to and subscribed before me this 28 day of March, 2014, in the presence of the two stated witnesses.


Notary Public (Signature and Seal)

Tammy J. Mangum
Printed Name/Notary or Bar Number

